

No. 9/5/84-6-Lab./8645.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad, in respect of the dispute between the workmen and the management of M/s. Cast-E-Cula, Plot No. 108, Sector 6, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA,  
FARIDABAD

Reference No. 414/1982.

*between*

SHRI RAM BACHAN, WORKMAN AND THE MANAGEMENT OF M/S. CAST-E-CULA PLOT NO.  
108, SECTOR 6, FARIDABAD

Present:—Shri C.L. Oberai for the workman.  
Shri R.C. Sharma for the Management.

#### AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act 1947, the Governor of Haryana referred the following dispute between Shri Ram Bachan, workman and the Management of M/s. Cast-E-Cula, Plot No. 108, Sector 6, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Ram Bachan, was justified and in order? If not, to what relief is he entitled?

Notices were sent to both the parties. The claimant in his claim statement dated 20th January, 1983, alleged that he was employed with the respondent on 12th February, 1981 as helper and was drawing Rs. 265/- per month. It was then alleged that the Management wanted to sign the register for Rs. 340/- but was actually paying Rs. 265/- It was then alleged that he asked the Management to pay him Rs. 340/- as salary but the management refused to do so and did not give him any work with effect from 13th June, 1982, when he filed a complaint to the Labour Inspector. It was further alleged that the claimant gave a general demand notice to the Labour cum-Cancellation Officer, Sector 7, Faridabad on 2nd July, 1982 when the Management served a false chargesheet on him on 14th July, 1982 and without concluding the enquiry, dismissed the claimant. It was also alleged that the claimant was a member of Unter Rashtriya Mazdoor Union and on account of trade union activities he was dismissed from service in an illegal manner and was, therefore, entitled to reinstatement with full back wages.

2. The Management in their written statement dated 8th December, 1983 pleaded that the claimant was employed as helper and he alongwith other workers misbehaved with Shri D.R. Sharma, Production Manager on 12th June, 1982 inside the factory and refused to work according to his instructions. It was then pleaded that the chargesheet dated 17th June, 1982 was issued to the claimant and another workman, but they refused to receive the same and remained absent from duty. It was then pleaded that the claimant reported for duty on 13th July, 1982 when he received the chargesheet and submitted his reply denying the charges. It was further pleaded that the Management did not conduct any enquiry and preferred to discharge him from service on account of his misconduct for the reasons that he had absented himself from duty and as such the termination of the service of the claimant was legal and proper.

3. The claimant in his rejoinder dated 9th March, 1983 reiterated the pleas taken in the claim statement.

4. On the pleadings of the parties, the following issues were framed on 9th March, 1983:—

(1) Whether the termination of service of Shri Ram Bachan, was justified and in order? If not, to what relief is he entitled?

5. It may be mentioned that the management has examined three witnesses and documents Ex. M-1 to M-6, have been tendered into evidence. The workman has himself appeared in the witness box and documents, Ex. W-1 to W-8, have been tendered into evidence. After going through the evidence and hearing both the representatives of the parties, my findings on the above issue is as under:—

#### Issue No. 1

6. The Management has examined MW-1 Shri Ram Chand Govila, General Manager who stated that Shri Daulat Ram Sharma, Foreman had given the complaint Ex. M-1 to him when he made the enquiry which revealed that the workman refused to work and abused the Foreman. He further stated that the letter Ex. M-2 was issued by the Management and that the claimant was chargesheeted,—vide charge sheet Ex. M-1 and Ex. M-4 was the reply given by him. He further stated that enquiry could not be held because the workman did not turn up and thereafter the services of the claimant were terminated,—vide letter Ex. M-6. He also stated that

the total attendance of the claimant was 194. MW-2 Shri Mahai Lal stated that Shri Daulat Ram was his predecessor. He then stated that the claimant and one Shri Suresh were helpers in the factory and that when Shri Daulat Ram asked him to put coal and iron into the furnace, they refused to do so and abused him when the Foreman reported the matter to the Management. He further stated that he did not know the whereabouts of Shri Daulat Ram. MW-3 Shri Ram Karan stated that he knew the claimant and Shri Suresh who worked as helper in the factory while Shri Daulat Ram was the Foreman. He further stated that the Foreman asked the claimant and Shri Suresh to put coal and iron into the furnace but they refused to do so and that they did not bear anything else.

7. Shri Ram Bachan has appeared as WW-1 and stated that he was employed in the respondent factory on 2nd February, 1981 and was getting Rs. 265/- per month but in the register, his signatures were obtained for Rs. 340/- per month due to which he filed a complaint with the management. He further stated that the Management refused to accede to his request on 12th June, 1982 and on 13th June, 1982, the proprietor of the factory did not allow him to join duty. He then stated that he filed a complaint with the Labour Inspector where the management took the pleas that they had suspended the claimant. He then stated that he served the demand notice Ex. W-1 which was sent by registered post,—vide postal receipt Ex. W-2. He further stated that Ex. M-3 was the letter received by him from the Conciliation Officer. He then stated that he had received the suspension order. He further stated that the suspension cum-chargesheet was given to him before the Conciliation Officer which was Ex. M-3 and he sent his reply, the copy of which was Ex. M-4. He then stated that no enquiry was held even though he had received the letter for holding the enquiry which was Ex. M-5. He further stated that his services were terminated and he was not given one month wages when he filed a complaint, the copy of which was Ex. W-4. He then stated that his services were terminated,—vide letter Ex. M-6 when he gave a demand notice copy Ex. W-5 by registered post,—vide postal receipt Ex. W-6 and thereafter the conciliation proceedings took place and Ex. W-7 and W-8 were the copies of those proceedings. He further stated that there was no Production Manager of the name of Shri Daulat Ram Sharma.

8. A perusal of the above evidence would show that Ex. M-1 is the complaint dated 12th June 1982 on the basis of which the claimant was suspended on 13th June, 1982,—vide letter Ex. M-2. The chargesheet Ex. M-3 was given to the claimant on 17th June, 1982 and in his reply dated 14th June, 1982—Ex. M-4, he denied the charges when the Management informed the claimant that the domestic enquiry would be held by the Enquiry Officer,—vide letter Ex. M-5, dated 16th July, 1982. Thereafter the order, dated 22nd February, 1982 Ex. M-6 was passed by the Management in which it was mentioned that the Management was not satisfied with the explanation given by the claimant and that the allegations against the claimant were correct and keeping in view the serious allegations made against the claimant, the claimant was being relieved from his duty with immediate effect and could his dues. It is then apparent that after obtaining reply from the claimant the Management did not hold any recovery enquiry into the charges levelled against him and terminated his service with immediate effect on 22nd July, 1982 on the ground that the allegations against the claimant were of a serious nature. According to rule 20(2) of Industrial Employment (Standing Order), Punjab (Haryana First Amendment) Rules, 1969, the service of the workman could not be terminated on the ground of misconduct unless he had been adjusted guilty of misconduct after domestic enquiry held in the manner mentioned in that sub-section. Consequently, the Management had served the chargesheet on the claimant obtained his reply regarding the allegations made in the complaint Ex. M-1. It was thus incumbent on the management to appoint the Enquiry Officer to hold the enquiry and after obtaining findings of the Enquiry Officer, the Management could proceed further in accordance with Industrial Employment (Standing Order), Punjab (Haryana First Amendment) Rules, 1969. The Management, however, failed to do so and relieved the claimant with immediate effect on 22nd July, 1982,—vide letter Ex. M-6 mentioned by therein that in view of the serious allegations which were correct, he should collect his dues. The order Ex. M-6 is therefore, illegal nor the provisions of Section 25 of the Industrial Disputes Act, 1947 have not been complied with.

9. It was argued by the representative of the management that even if no enquiry was held by the Management, the Management had adduced evidence in these proceedings. Reliance was placed on the ruling reported as *M/s. Godfrey Phillips India Ltd., and Manik Vasudeo and other*, 1973-1:LLJ page 278, in which it is laid down even if no enquiry has been held by an employer or if the enquiry already held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employees to adduce evidence before it and it is open to the employer to adduce evidence for the first time justifying its action. In the present case MW-1 Shri Ram Chand MW-2 Shri Mai Lal, and MW-3 Shri Ram Karan have deposed regarding the incident which allegedly took place with Shri Daulat Ram, Foreman. In the written statement, it is mentioned that the claimant misbehaved with D.R. Sharma, Production Manager. Consequently evidence led by the Management is inconsistent with the plea taken in the written statement. Moreover Shri Daulat Ram, Production Manager has not been produced by the Management. Further, testimony of Shri Ram Chand and MW-2 Shri Mai Lal regarding abuses having been hurled, does not find corroboration from testimony of MW-3 Shri Ram Karan because he did not depose anything in this respect. It was argued on behalf of the Management that MW-3 Shri Ram Karan was not cross examined and as such his version had been accepted. In view of the ruling reported as *Bachan Singh versus Prithvi Singh etc.* 1975-Current Law Journal, 242, in which it is laid down that where the main statement of the witness is not challenged in cross examination, it is to be accepted. As already mentioned above, this witness did not say anything regarding abuses having been given by the claimant and as such his testimony is of no help to the management in that respect. Under all these circumstances, the evidence led by the management does not prove the allegations made in the complaint Ex-M-1, especially when the testimony is inconsistent with the plea taken in the written statement.



10. It may be mentioned that Shri Ram Bachan claimant WW-1 stated in his cross examination that he was running his shop and his monthly income was Rs 700/- or 800/- per month. On the basis of this evidence, it was argued by the Management's representative that the claimant was gainfully employed because he was earning Rs 700/800 per month while his wages in the factory were Rs. 340/- per mensem. The representative of the workman argued that there was no plea in this respect and as such the evidence could not be taken into consideration. In para No. 8, of the claim statement, the claimant stated that he was unemployed ever since his unlawful dismissal of service. In para No. 8 of the written statement, the management denied the allegations made in para No. 8 of the claim statement. Consequently, the plea was taken by the claimant to the effect that he was unemployed but in the witness box, he admitted his income as Rs. 700/- per month. Consequently, the claimant being gainfully employed is not entitled to back wages, but he must be reinstated because it has been found that the order Ex. M-6 relieving him from duty is illegal. The award is passed accordingly.

Dated, the 9th November, 1984.

R. N. BATRA,  
Presiding Officer,  
Industrial Tribunal, Haryana, Faridabad.

Endst. No. 1218, dated 21st November, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,  
Presiding Officer.  
Industrial Tribunal, Haryana, Faridabad.

No. 9/5/84-6 Lab./8646.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Usha Electronics (India) Pvt. Ltd. Plot No. 21-22, Sector 25, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 246 of 1981

Between

SHRI HIRDEY RAM, WORKMAN AND THE MANAGEMENT OF M/S USHA ELECTRONICS (INDIA) PRIVATE LIMITED, PLOT NO. 21-22, SECTOR-25, FARIDABAD

Present:—

Shri H.R. Dua, for the workman.  
Shri R.C. Sharma for the Management.

#### AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947 the Governor of Haryana referred the following dispute between Shri Hirdey Ram, Workman and the Management of M/s Usha Electronics (India) Private Limited, Plot No. 21-22, Sector-25, Faridabad, to this Tribunal, for adjudication :—

“Whether the termination of service of Shri Hirdey Ram was justified and in order ? If not, to what relief is he entitled ?”

2. Notices were issued to both the parties. Demand notice dated 23rd April, 1981 was treated as claim statement on the request of the workman in which it was alleged that the claimant was engaged as Trainee Supervisor on 2nd June, 1977 at Rs. 200 per month. It was further alleged that he was designated as Supervisor but he never performed any duty of supervisor and was engaged as a workman and continued to be the same till his services were terminated on 17th April, 1981. It was further alleged that the termination of his service was illegal and unjustified and as such he was entitled to reinstatement with full back wages.

3. The management in their written statement dated 12th October, 1984 pleaded that the claimant was working as a Supervisor and was getting Rs. 660 and was controlling two Sections having 60 workers under him and that he used to take work from those workers and as such was not a workman. It was further pleaded that the claimant worked as Supervisor for three years continuously and that due to certain circumstances, it became necessary to terminate his services and it was not necessary to narrate those circumstances in the written statement, but one ground was that the Management had lost confidence in him due to which his services were terminated on 17th April, 1981. It was then pleaded that a letter of termination was offered to the claimant but he refused to

receive the same and it was subsequently sent by registered post. It was further pleaded that although the claimant was not entitled to any retrenchment benefits, yet the Management offered him Rs. 660 as notice pay and Rs. 1,320 as service compensation which amount was also sent by money order. It was further pleaded that the conduct of the claimant after termination of his service was undesirable because he threatened the Management and the strike took place at his instance which lasted for two days.

4. The claimant in his rejoinder dated 10th November, 1981 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 10th November, 1981 :—

(1) Whether Shri Hirdey Ram was a workman and defined in the Industrial Disputes Act ? OPW

(2) Whether the termination of service of Shri Hirdey Ram was justified and in order ? If not, to what relief is he entitled ? OPM.

6. It may be mentioned that claimant has appeared as WW-1 and document, Ex. W-1, has been tendered into evidence. The management has examined one witness and the documents Ex. M-1 to M-14, have been tendered into evidence. After going through the entire evidence and hearing representatives of both the parties, my findings on the above issues are as under :—

7. *Issue No. 1.*—Shri Hirdey Ram claimant has appeared as WW-1 and stated that he was employed in the year 1977 but he used to work on mixing machine and his duty was not changed till his services were terminated. He further stated that he used to forward leave application of the workmen, but the leave was sanctioned by the Supervisor and that no appointment was made by him nor he terminated the services of any workman. He then stated that he used to get the material issued, when he worked on the machine and that about 100 workmen were junior to him. He further stated that a demand notice was served by the Union but no settlement was arrived at due to which the workmen went on strike. He further stated that he also took part in that strike and his services were terminated by the Management in a revengeful spirit. He then stated that he was not performing any supervisory job and that no charge sheet was given to him and that he was unemployed since then. Ex. W-1 is the letter dated 1st June, 1977 issued by the Management to the claimant in which it was mentioned that he had been promoted as Trainee Supervisor with effect from 2nd June, 1977 and that his work would be closely watched by the Management and increment would be decided accordingly.

8. Shri Naresh Kumar Director of the respondent has appeared as MW-1 who stated that he had been looking after day to day working of the company and that the claimant was employed as Supervisor in their factory and was working in coating and taping departments. He further stated that about 30 workers were working under him and that the work was done by the workmen under his supervision and he used to submit his report to MW-1. He further stated that the claimant used to look after the production in the factory and arranged the material from the Store through the workman and sometimes he himself used to bring the same. He then stated that the claimant used to recommend leave applications of the workmen and that the Works Manager used to select the new candidates in casual labour with the claimant. Documents Ex. M-1 to M-8 and M-10 to 27 were proved in the cross examination of the workman on 9th February, 1982. Ex. M-1 to M-4 are the staff attendance registers. Ex. M-5 is the file relating to the production in the factory. Ex. M-6 contains material issues slips. Ex. M-7 contains the circular. Ex. M-8 contains the leave applications. Ex. M-10 to M-23 contain production reports. Ex. M-24 and M-25 contain the details regarding the production on the machines.

9. The above evidence shows that the claimant was appointed as Trainee Supervisor at the rate of Rs. 200 per month on 1st June, 1977 and his work had to be watched by the Management. The Management has not produced any document to show that the claimant was ever confirmed as a Supervisor. The claimant has deposed that he used to work on the mixing machine and that several duties given to him were of a clerical nature because he stated that he merely used to recommend the leave application and prepare the details regarding the production in the factory and the material was got issued by him. The testimony of MW-1 Shri Naresh Kumar to the effect that the claimant was working as Supervisor cannot be accepted because documents Ex. M-1 to M-8 and M-10 to M-25 which have been mentioned above in details, go to show that the claimant used to prepare the production reports and leave application were recommended by him. MW-1 Shri Naresh Kumar admitted in cross examination that the person, who used to recommend the leave applications, was not competent to sanction the same and that he did not remember if any order was passed in writing to the effect that the claimant would sit with the Works Manager for consultation purposes. He further admitted that the claimant used to put the material himself in the mixing machine. The case of the claimant that he used to work on the mixing machine and that he used to put the material in the mixing machine, shows that he was performing the jobs of manual nature. Even otherwise being in service in the factory since 1st June, 1977, he was drawing Rs. 660 per month including all allowance on 17th April, 1981, when his service were terminated. On this petty salary per month it is difficult to employ a good peon. The preparation of the production report etc., was the job of a clerical nature. Merely because his name was entered in the staff register, is no ground to hold that he was not a workman, especially when he was performing the jobs of manual nature as mentioned above. In the ruling reported as *M/s Bharat Kala Kendra Private Limited Versus R.K. Baweja and another*, 1981-Lab. I.C. 893, it is laid down that entire allocation of duties assigned should



be considered in order to find out whether he is a workman or not. In the ruling reported as **Mathur Aviation and Ltd., Governor, Delhi and others**, 1977-II-LLJ page 255, it is laid down that pilot of plane is a workman and that it does not mean that a person who does some work and gets assistance for doing that work can be described as a person working in a managerial or administrative capacity. Consequently, it is held that the claimant was a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. The issue is decided accordingly.

10. *Issue No. 2.*—Ex. M-28 is the letter dated 17th April, 1981 by which the services of the claimant were terminated, in which it was mentioned that due to certain circumstances, his services were dispensed with effect from 17th April, 1981 and so called circumstances have not been mentioned in this letter. In the written statement, the Management did not mention these circumstances and stated that it was not necessary to do so. Consequently, the circumstances, which led to the termination of service of the claimant have not been pleaded nor mentioned in the termination letter. In the witness box, Shri Naresh Kumar MW-1 stated that the claimant used to misbehave with female worker, due to which his services were terminated. In cross-examination, he stated that the claimant had a love affair with a girl, who was still employed in the factory, due to which his services were terminated and that no complaint was received against the claimant for eve teasing. It will thus be seen that the version given by this witness in examination is inconsistent with the reply given in cross-examination. In examination, the chief, it was stated that the claimant used to misbehave with some female workers, while in cross-examination, it was stated that he had a love affair with a girl, but no complaint was received against the claimant. Consequently, there was nothing on the file against the claimant, when his services were terminated. The claimant was not charge-sheeted for any misbehaviour with any female worker. Under these circumstances, the plea taken by the representative of Management that the Management had lost faith in the claimant cannot be accepted because there was no material on the file in that respect as mentioned above. In the ruling reported as **Gujarat Steel Tubes Ltd., and Gujarat Steel Tubes Mazdoor Sabha**, 1980-I-LLJ page 137 at page 150, it is laid down that even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt, but may feel like not keeping a man he is not happy with. This ruling is distinguishable facts because there was no material on the file against the claimant and that in any event the services of the claimant could be terminated in accordance with Industrial Employment (Standing Orders) Punjab (Haryana First Amendment) Rules, 1969 and not in an arbitrary manner. In the rulings reported as **AIR India Corporation, Bombay Versus VA Rehellow and another**, 1972-I-LLJ, page 501, it is laid down that it appears that the appellant had lost confidence in the complainant and this loss of confidence was due to a grave suspicion regarding the complainant's private conduct and behaviour with air hostesses, employed by the appellant and the order of termination was proper. This ruling is distinguishable on facts because in the present case there was no such material on the file. In the ruling reported, as **the Management of Panitole Tea Estate and the workmen**, 1971-I-LLJ, page 233, it is laid down that the loss of confidence in the integrity of an employee should be substantiated by cogent evidence before the Labour Court. In the ruling reported as **L. Michael and another Versus M/s Johnson Pumps Ltd.**, 1975 Labour Industrial Cases 399 it is laid down that belief or suspicion of the employer should not be a mere whim or fancy, but it should be bona-fide and reasonable and it must rest on some tangible basis. Consequently, in the present case, the plea taken by the management regarding loss of confidence in the claimant cannot be accepted.

11. It was argued that in the present case, the claimant had refused to accept the notice as well as compensation on 17th April, 1981 and that the amount sent to the claimant by money-order was not accepted,—vide documents Ex. M-33 to M-37 and as such there was compliance with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The claimant was not the junior most person as admitted by MW-1 Shri Naresh Kumar in his statement. As such the provisions of Section 25-G of this Act were not complied with because ordinarily the junior most person is to be retrenched. Further the provisions of Section 25-F(c) of this Act were not complied with because the prescribed notice was not sent to the concerned Government. Under these circumstances, the provisions of the Industrial Disputes Act, 1947, regarding termination of service of the employee have not been complied with. Under all the circumstances, it is held that the termination of the services of the claimant by the management was not justified and in order and as such the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

The 9th November, 1984.

R.N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.

Endst. No. 1219, dated the 21st November, 1984

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,  
Faridabad.